



Billing Code 4333–15

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2019–N053; FXES11140800000–190–FF08ECAR00]

Habitat Conservation Plan for the Coastal California Gnatcatcher; Categorical Exclusion for 93-129 Ltd, Orange County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received an application from 93-129 Ltd for a 10-year incidental take permit for the coastal California gnatcatcher pursuant to the Endangered Species Act. We are requesting comments on the permit application and on our preliminary determination that the applicant’s accompanying proposed habitat conservation plan qualifies as low effect, eligible for a categorical exclusion under the National Environmental Policy Act. The basis for this determination is discussed in our environmental action statement and associated low-effect screening form, which are also available for public review.

DATES: Written comments should be received on or before **[INSERT DATE 30 DAYS**

AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: *Submitting Comments:* You may submit comments by one of the following methods. Please include “93-129 Ltd” at the beginning of your comments.

- *U.S. Mail:* Field Supervisor, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2177 Salk Avenue, Suite 250, Carlsbad, CA 92008.

- *Fax:* Field Supervisor, 760–431–9624.
- *Email:* fw8cfwocomments@fws.gov.

Obtaining Documents: You may obtain copies of the documents by the following methods:

- *Internet:* https://www.fws.gov/carlsbad/HCPs/HCP_Docs.html.
- *Telephone:* 760–431–9440.
- *U.S. Mail:* Carlsbad Fish and Wildlife Office (address above).
- *In-Person:* You may examine the documents by appointment during regular business hours at the Carlsbad Fish and Wildlife Office (address above). Please call to make an appointment (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Ms. Karen Goebel, Assistant Field Supervisor, Carlsbad Fish and Wildlife Office, 760–431–9440. If you use a telecommunications device for the deaf (TDD), please call the Federal Relay Service (FRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), have received an application from 93-129 Ltd (applicant) for a 10-year incidental take permit for one covered species pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The application addresses the anticipated “take” of the threatened coastal California gnatcatcher (*Polioptila californica californica*; gnatcatcher). The applicant proposes to grade, subdivide, and construct infrastructure for four estate custom home parcels on the approximately 50-acre parcel (Tentative Parcel Map 93-129) in Laguna Niguel, California. The proposed project will impact an estimated 4.3 acres of coastal sage scrub and up to two pairs of gnatcatchers. A

conservation program to avoid, minimize, and mitigate for project activities would be implemented as described in the applicant's proposed habitat conservation plan (HCP). On June 25, 2007, the Service issued a 10-year incidental take permit for the subject project. Implementation of the project was delayed and the permit expired on June 25, 2017.

We are requesting comments on the permit application and on our preliminary determination that the proposed HCP qualifies as a low-effect HCP, eligible for a categorical exclusion under the National Environmental Policy Act of 1969, as amended (NEPA; 42 U.S.C. 4321 *et seq.*). The basis for this determination is discussed in our environmental action statement and associated low-effect screening form, which are also available for public review.

Background

Section 9 of the ESA and its implementing Federal regulations prohibit the take of animal species listed as endangered or threatened. "Take" is defined under the ESA as to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect [listed animal species], or to attempt to engage in such conduct" (16 U.S.C. 1538). "Harm" includes significant habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential behavioral patterns, such as breeding, feeding, or sheltering (50 CFR 17.3). However, under section 10(a) of the ESA, the Service may issue permits to authorize incidental take of listed species. "Incidental taking" is defined by the ESA implementing regulations as taking that is incidental to, and not the purpose of, carrying out an otherwise lawful activity (50 CFR 17.3). Regulations governing incidental take permits for endangered and threatened species, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32.

Applicant's Proposed Project

The project is located on a 50-acre property in the City of Laguna Niguel in Orange County, California (Tentative Parcel Map 93-129). The applicant requests a 10-year permit under section 10(a)(1)(B) of the ESA. If we approve the permit, the applicant anticipates taking gnatcatcher as a result of permanent impacts to 4.3 acres of coastal sage scrub that the species uses for breeding, feeding, and sheltering. The take would be incidental to the applicant's activities associated with the grading, subdivision, and construction of four estate custom home parcels.

The applicant proposes to mitigate permanent impacts to 4.3 acres of occupied gnatcatcher habitat through the creation and restoration of 10.61 acres of coastal sage scrub and conservation of 12.8 acres of coastal sage scrub (including the created and restored habitat). The conserved habitat will be managed in perpetuity.

The applicant's proposed HCP also contains measures to minimize the effects of construction activities on the gnatcatcher, including the following: oversight of project activities by a biological monitor; fencing the project limits; implementing an erosion control plan to avoid and minimize degradation of adjacent native habitat; removing invasive plant species from the property; minimizing the spillage of project lighting into the conserved area; providing educational brochures to residents on the responsibilities associated with living near a conserved area; removing previously used dirt access roads to reduce illegal trespassing into natural areas; and monitoring and reporting to the Service upon project completion.

Proposed Action and Alternatives

The Proposed Action consists of the issuance of an incidental take permit and implementation of the proposed HCP, which includes measures to avoid, minimize, and mitigate impacts to the gnatcatcher. If we approve the permit, take of gnatcatcher would be authorized for the applicant's activities associated with the implementation of the 93-129 project. In the proposed HCP, the applicant considers two alternatives. Under the No Action Alternative, no permit would be issued and incidental take of the gnatcatcher resulting from habitat loss would occur, and no long-term protection and management would be afforded to the species. The No Action Alternative would not meet the primary goal of the proposed Project, which is to construct residential homes. Under the Parcel by Parcel Alternative, each individual parcel owner would conduct grading and slope stabilization activities. This alternative would necessitate the construction of an additional road immediately adjacent to the coastal sage scrub habitat conservation area on the north side of the property's ridgeline and would significantly increase the impacts to coastal sage scrub habitat.

Our Preliminary Determination

The Service has made a preliminary determination that approval of the HCP and issuance of an incidental take permit qualify for categorical exclusion under NEPA (42 U.S.C. 4321 *et seq.*), as provided by the Department of the Interior implementing regulations in part 46 of title 43 of the Code of Federal Regulations (43 CFR 46.205, 46.210, and 46.215), and that the HCP qualifies as a low-effect plan as defined by the Habitat Conservation Planning Handbook (December 2016).

We base our determination that a HCP qualifies as a low-effect plan on the following three criteria:

- (1) Implementation of the HCP would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats;
- (2) Implementation of the HCP would result in minor or negligible effects on other environmental values or resources; and
- (3) Impacts of the HCP, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources that would be considered significant.

Based upon this preliminary determination, we do not intend to prepare further NEPA documentation. We will consider public comments in making the final determination on whether to prepare such additional documentation.

Next Steps

We will evaluate the proposed HCP and comments we receive to determine whether the permit application meets the requirements and issuance criteria under section 10(a) of the ESA (16 U.S.C. 1531 *et seq.*). We will also evaluate whether issuance of a section 10(a)(1)(B) incidental take permit would comply with section 7 of the ESA by conducting an intra-Service consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue a permit. If the requirements and issuance criteria under section 10(a) are met, we will issue the permit to the applicant for incidental take of the gnatcatcher.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire

comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the ESA (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Scott Sobiech,

Acting Field Supervisor,

Carlsbad Fish and Wildlife Office,

Carlsbad, California.

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